DOCUMENT RESUME

ED 238 360 HE 016 898

AUTHOR Newcomb, Betty
TITLE Affirmative Action. [AGB Pocket Publications. No. 12].
INSTITUTION Association of Governing Boards of Universities and Colleges, Washington, D.C.
PUB DATE Feb 81
NOTE 6p.
AVAILABLE FROM Association of Governing Boards of Universities and Colleges, One Dupont Circle, Suite 400, N.W., Washington, DC 20036 ($3.50, nonmembers; $1.95, members).
PUB TYPE Viewpoints (120)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Administrator Responsibility; *Affirmative Action; *Compliance (Legal); Educational Opportunities; *Equal Opportunities (Jobs); Governing Boards; Government School Relationship; Higher Education; Racial Discrimination; Selective Admission; Sex Discrimination; *Trustees

ABSTRACT

The history of affirmative action, current requirements, myths concerning these requirements for higher education, and the responsibilities of college trustees are considered. Affirmative action is defined as follows: steps taken to ensure that there is nondiscrimination and equal opportunity in employment and educational programs; result-oriented steps taken toward the elimination of barriers for protected classes; steps taken by order of a compliance agency or the courts; and steps taken by an institution with no history of overt discrimination. Myths include the following: universities have had funds stopped for noncompliance with regulations; the federal government requires employers to fill quotas for women and minorities; white males are being systematically discriminated against in favor of less qualified women and minorities; the federal government requires that professional schools give preferences in admission to minorities; and women are not discriminated against. It is suggested that trustees' responsibilities include the following: establishing a commitment to equal opportunity, requiring that affirmative action become an important part of institutional practices, and including the views of women and minorities in institutional decision-making. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED238360

Betty Newcomb

Betty Newcomb is director of the Equal Opportunity/ Affirmative Action program at Ball State University (IN). She is the founder of the American Association for Affirmative Action and editor of its publication, AAAA Newsletter.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

AGB

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

HE 016 898

Affirmative Action

While broadcasting during the 1972 National Democratic Convention, Walter Cronkite had occasion to interview Gloria Steinem. The women's rights activist said that she wanted "affirmative action" for equal representation of minorities and females in all processes of the convention. After the interview Cronkite asked his associate in the press box, "What is affirmative action?" and receiving no answer, shook his head in puzzlement and returned to reporting the news.

Today, especially with the publicity generated by the Bakke, the Weber, and other cases, as well as the press attention to Title IX, nearly everyone has heard about affirmative action, but for many interested people the puzzlement remains. The controversy about affirmative action programs has done as much to cloud the relevant issues as to define them, and the general public has been led to believe perhaps more myths about the programs than facts.

Principle isn't new

Federal action to protect the interest of minorities is not new, and is, in fact, embodied in the federal structure where the interests of the citizens of states with small populations are protected in the Senate, the interests of the densely populated states are protected in the House of Representatives, and the legal rights of the individual and of groups are protected by the judicial system.

Many subsequent acts have extended protection to individuals or groups of individuals, such as the 14th Amendment (1868) providing legal protection for the nation's black people. From 1866 to 1871 four additional civil rights acts were passed by Congress to limit the power of the states to discriminate against black people. In 1920, the ratification of the 19th Amendment provided constitutional protection to women's right to vote.

Especially since the 1920s as economic, intellectual, social and legal changes took place, new definitions of "discrimination," "rights" and "minorities" emerged, and new means were sought effectively to prohibit discrimination on the basis first of race, religion and national origin, and then on the basis of sex, age and physical or mental disability. In 1941, President Roosevelt signed Executive Order 10308 forbidding race discrimination in defense industries, though the measure proved to be less effective than hoped. Successive presidents signed more stringent executive orders forbidding discrimination and requiring documented evidence of affirmative steps taken to eliminate the effects of past discrimination. Judicial decision followed judicial decision, defining and broadening the impact of existing civil rights law, and the U.S. Congress passed legislation prohibiting discrimination and creating a controlled enforcement process with penalties.

Although in the beginning most public institutions were exempt from required compliance with affirmative action regulations, they were included in 1972 when Congress passed various strengthening amendments to many existing laws and created some new ones.

By the fall of 1972 most educational institutions that received federal grants and contracts were required to write affirmative action plans. When Title IX, also enacted in 1972, included students' loans as part of the definition of general financial assistance, a great many other institutions, not formerly subject to non-discrimination law, began to move toward—or to resist—compliance.

Current requirements

By early 1979, federal equal opportunity/affirmative action laws covered all employment and educational programs and activities for every educational institution that receives federal aid, and for equal opportunity and more limited affirmative action in institutions that do not receive direct federal aid, although all institutions are not covered by all laws. The legal foundation for equal opportunity/affirmative action programs and procedures lies in federal law enacted by Congress, in Executive Orders by the President, in regulations and guidelines written by various federal agencies responsible for enforcing the law, and in judicial decisions by the courts.

By 1980 most higher education institutions that received money from the federal government were subject to the following:

1. Laws prohibiting discrimination in employment and/or education on the basis of race, color, sex, national origin, U.S. citizenship, religion, age, mental and physical handicap, and Vietnam veteran's status.
2. Laws and Executive Orders that require "affirmative action" in employment and/or education.
3. State laws that prohibit discrimination.

The legal distinctions between equal opportunity and affirmative action are still not entirely clear. "Equal opportunity" means a combination of both non-discrimination and affirmative action.

Non-discrimination laws provide that in employment or in education, equal opportuntiy or equal benefits may not be denied any person for something irrelevant to the task to be performed—i.e., something which an individual has:

1. No physical power to change—i.e., his or her color of skin, sex, age, country of origin (or ancestral origin), physical or mental handicap, status as a Vietnam veteran.

2. Guaranteed to him/her as a freedom provided by the U.S. Constitution—e.g. the right to religious preference.

Affirmative action means:

1. Steps taken to ensure that non-discrimination and equal opportunity in employment and educational programs are being practiced.

2. Positive result-oriented steps taken toward the elimination of barriers for protected classes.

3. Steps taken by order of a compliance agency or the courts to "make whole" one or more of the protected classes which evidence indicates are the victims of past discrimination by a specific employer.

4. Steps taken by an institution with no history of overt discrimination to provide special treatment for individual members of classes of people who have been the victims of societal discrimination.

Affirmative action may be undertaken voluntarily, may be required as a condition for receiving federal contracts and/or grants, or may be ordered as a remedy for past discrimination by certain compliance agencies or by the courts.

Affirmative action taken to eliminate barriers for protected classes, however, must not infringe on non-discrimination provisions of other legislation. The question for which definitive answer is still needed is the legal distinction between non-discrimination and affirmative action taken as "positive result-oriented steps" toward the eliminations of barriers.

Some legal parameters have been defined by the courts, In addition, some answers have begun to emerge for questions related to matters that are unique to higher education structure, self-governance and academic freedom. The Supreme Court's 1978 decision in Bakke v. University of California, Davis, while it left certain other important issues unresolved, provided clear prohibitions to separate selection procedures for "special" minority and "regular" applicants to professional schools. The 1979 Supreme Court decision in Weber v. Kaiser suggested the kinds of criteria to be followed for preferential training programs that would not be in violation of Title VII; those criteria presumably will also hold for voluntary affirmative action in employment.

Although affirmative action plans were first developed by most colleges and universities because they were mandated as a condition for receiving federal contracts, some universities had already been required to develop plans by the courts as a result of discrimination complaints brought against institutions under the 1964 Civil Rights Act. By the early '80s, colleges and universities had developed affirmative action plans to ensure non-discrimination to correct past wrongs and to protect themselves against lawsuits in an increasingly litigious academic community as well as to improve the on-campus status of women and minorities. Record-keeping developed in compliance with affirmative action plans has also proven useful as part of a legal defense for litigation or claims not related to discrimination areas.

Myths behind the controversy

Behind the controversy that has developed over affirmative action lie several fairly complex causes, such as the pervasive character of the program in the institution and the negative effect of the economic downturn and demographic leveling off. In addition, affirmative action has been the subject of a number of widely believed myths. As a result of these, it remains a much misunderstood concept. Chief among the myths are these:

Myth 1. Universities have had funds cut off for non-compliance with "affirmative action" regulations.

Fact: No funds have ever been cut off—although occasionally they have been held up pending the signing of a letter of agreement pledging compliance, and since the Carter administration reorganization of compliance agencies, recipients have been subject to more stringent pre-award review.

Myth 2. The federal government re-

quires employers to fill "quotas" for women and minorities.

Fact: Title VII protects all races and both sexes from discrimination in employment. The term "quota" has been confused with the terms "goals and timetables". Required only by Executive Order, "goals and timetables" are documented good faith efforts to provide a balanced work force within an institution. Quotas are designed to keep people out of the system. Goals and timetables are designed to include people in the system. "Quotas" have been ordered by the courts but only where after a lengthy investigation and a full appeal process, the courts have found evidence of discrimination.

Myth 3. White males are being systematically discriminated against in favor of less qualified women and minorities.

Fact: To hire a less qualified person because of that person's race or sex is illegal. Although some cases of discrimination against white males have been reported and found to be valid, discrimination against women and minorities has been found far more often.

Myth 4. The federal government requires that professional schools give preferences in admission to minorities.

Fact: No such federal law exists. If preference has been displayed, it has been undertaken voluntarily. The Bakke decision limited the ability of schools to provide preference in admissions.

Myth 5. Women are not discriminated against. Statistics show that differences in numbers, pay, and workload reflect choices women make to place family and home above careers.

Fact: Little or no valid evidence exists to support this claim. In fact, considerable evidence suggests the contrary.Recent research in which all relevant factors have been controlled still reveal wide gaps between male and female professionals in status and in salaries, although gaps vary widely among academic disciplines.

The board's responsibility

Despite the strength of the myths, it is ultimately the responsibility of the board of trustees to see through them and ensure that "affirmative action" is a reality.

How can a board do this?

First, by itself learning the facts about affirmative action. A discussion led by a knowledgeable person, the director of the equal opportunity/affirmative action program, or an appropriate faculty member or administrator can be helpful.

Second, by establishing on the campus a commitment to equal opportunity in employment and education, and holding administrators responsible for institutional compliance with equal opportunity/affirmative action law.

Third, by requiring that affirmative action programming activities become as visible and viable a part of the institution as are fundraising, attracting students, or maintaining the quality of instruction.

Fourth, by insisting that the views of women and minorities be included in the institution's decision-making processes.

Fifth, by requiring that the institution's director of equal opportunity and affirmative action be placed appropriately in the administrative structure and given full support in carrying out the responsibilities of the positions.

Because the administrator's effectiveness has been found to be positively related to administrative location, he or she would report directly to the chief administrative officer. High level placement guarantees easy and direct access to all decision makers, permitting efficient execution of the dual role of seeing that the protected classes' interests are considered and of advising the administration when a problem could affect, legally or practically, compliance with affirmative action programs. The affirmative action director should never be placed under the personnel director, a reporting system fraught with conflict of interest implications.

Beyond these, boards can request in-service training sessions for themselves to test their own attitudes toward mi-

norities and women; they can work with the affirmative action director and other appropriate administrators to develop equal opportunity policies and procedures for employment and educational programs and activities; they can encourage research on affirmative action related matters through the institution they serve or through private foundations of which they may be members.

Other practical steps boards can take to further affirmative action include these:

Requiring quarterly or semi-annual reports from the director; requiring that periodic reports be given other line administrators and the academic community at large; requesting the attendance of the affirmative action director at board meetings at least once each year for an annual report; providing means for the director of the programs to initiate relevant programs that cross organizational lines; insisting that in interviewing a candidate for hiring or promotion, especially line administrators, it be ascertained that the candidate is serious and effective in implementing or abiding by affirmative action programs; and finally, assuring that the office of the director be adequately staffed.

Salary equalization for administrative staff and faculty, provision of equitable and comparable athletic programs for women, equitable scholarship funding, special accommodations for the handicapped in physical facilities and educational programs, ongoing programs in affirmative action/equal opportunity law for supervisors and personnel—all these cost money and all require planning and effort.

Changing a long-established way of thinking and doing things is never easy, and the difficulty is compounded by a period of financial stress. It demands new, innovative ideas. It demands leadership. and leadership is what boards must provide. ■

This booklet is the twelfth in a series, AGB Pocket Publications, designed to give both new and experienced trustees concise, summary information on subjects and issues of high interest to governing boards.

No. 1—Trustee Responsibilities
by John W. Nason

No. 2—Trustee Workshops and Retreats
by Richard T. Ingram

No. 3—The Fund-Raising Role
by Michael Radock

No. 4—Trustees and Preventive Law
by Kent M. Weeks

No. 5—Academic Collective Bargaining
by Kenneth P. Mortimer

No. 6—Resource Management Responsibilities
by Charles A. Nelson

No. 7—The Tenure Issue
By Richard P. Chait and Andrew T. Ford

No. 8—The Board Chairperson and President
by John W. Pocock

No. 9—A Guide for New Trustees
by Nancy R. Axelrod

No. 10—Building a More Effective Board
by Robert L. Gale

No. 11—Institutional Planning
by Rhoda M. Dorsey

No. 12—Affirmative Action
by Betty Newcomb

No. 13—Managing Your Endowment
by J. Peter Williamson

The Trustee Information Center

Additional information on affirmative action is available from AGB's Trustee Information Center. Dial the Trustee's HOTLINE 202 296-4865 for answers to these and other governance questions.

February 1981